

# Exhibit C

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----x  
BERIAM ORTIZ,

Index No.: 301887/07

Plaintiff

v.

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT,  
CORP., AND CAROL SHERMAN,NOTICE OF REMOVAL OF  
CIVIL ACTION PURSUANT  
TO 28 U.S.C. §1441

'07 CIV 1036

Defendants

JUDGE CHIN

TO: CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN, that Carol Sherman, the Defendant in the civil action in the SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX, hereby files this Notice of Removal to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. Sections 1441 and 1446. A true copy of the State Court Notice of Removal of Civil Action (without its attachments) is attached hereto as Exhibit "A" and is incorporated herein by reference. True and correct copies of Plaintiff's Summons and Complaint are attached hereto as Exhibit "B". A true and correct copy of Defendants' Answer in this action is annexed hereto as Exhibit "C".

This is a civil action seeking monetary damages in excess of \$75,000 of which this Court has original jurisdiction under 28 U.S.C. section 1332.

The United States District Court of the Southern District

of New York has original jurisdiction of this matter based on diversity of citizenship of the parties. The basis of this jurisdiction is provided in Section 1332(a) of Title 28 of the United States Code. This section states, in pertinent part, that the district courts should have original jurisdiction of all civil actions with a matter in controversy exceeds the sum of or value of \$75,000 exclusive of interest and cost, and is between citizens of different States.

As seen from the pleadings in this matter, plaintiff is a citizen of the State of New York and defendant is a citizen of the State of Connecticut. The Summons and Complaint further alleges that the matter in controversy is well in excess of \$75,000.

Concurrently with the filing of this Notice of Removal, defendant is giving notice to all known parties of this removal and the fact that this case is to be docketed in this Court and that this Court will grant relief to defendant as is proper under the circumstances.

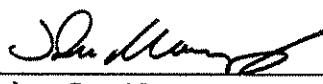
Pursuant to 28 U.S.C. Section 1446(a) all process, pleadings and orders that have been served upon defendant to date in this matter are annexed to this Notice of Removal as Exhibit "B".

Pursuant to 28 U.S.C. 1446(d) a true and complete copy of this Notice of Removal will be submitted for filing with the

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX.

DATED: November 14, 2007  
White Plains, New York

Yours, etc.,  
Eustace & Marquez  
Attorneys for Defendant  
**Carol Sherman**  
Office and Post Office Address  
1311 Mamaroneck Avenue  
3rd Floor  
White Plains, New York 10605  
(914) 989-6650

By:   
John R. Marquez - 3623

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----x Index No.: 301887/07  
BERIAM ORTIZ,

Plaintiff

NOTICE OF FILING OF  
NOTICE OF REMOVAL

v.

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT,  
CORP. AND CAROL SHERMAN,

Defendants

-----x

TO: THE CLERK OF THE SUPREME COURT FOR THE STATE OF NEW YORK  
AND TO ALL PARTIES TO THE ACTION HEREIN:

PLEASE TAKE NOTICE THAT Defendant Carol Sherman, have filed  
a Notice of Removal of this action in the United States District

Court for the Southern District of New York, on November 14,

2007, pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446.

A Copy of the said Notice of Removal is annexed hereto as  
Exhibit "A". This notice is filed pursuant to 28 U.S.C.  
§1446(d).

DATED: November 14, 2007  
White Plains, New York

Yours, etc.,  
Eustace & Marquez  
Attorneys for Defendant  
Carol Sherman  
1311 Mamaroneck Avenue  
3rd Floor  
White Plains, New York 10605  
(914) 989-6650

By: John R. Marquez  
John R. Marquez

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

BERIAM ORTIZ,

X

Plaintiff,

Plaintiff Designates  
Bronx County as the place  
of Trial

-against-

ERIN KATHLEEN BARLOW, TOYOTA MOTOR  
CREDIT, CORP. and CAROL SHERMAN,

Defendants.

X

To the above named Defendant(s):

Index No.: 301887/mz  
SUMMONS

DATE FILED 10/16/2007

Plaintiff resides at  
323 E, Gun Hill Road  
Bronx, New York 10467

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Hartsdale, New York  
October 9, 2007

Defendants' Addresses:

Erin Kathleen Barlow  
83 Maplewood Avenue  
Dallas, PA 18612

Toyota Motor Credit Corp.  
Box 105386  
Atlanta, GA 30348

Carol Sherman  
169 Ocean Avenue  
Stamford, CT 06902

JAY S. HAUSMAN & ASSOCIATES, P.C.

By:

JAY S. HAUSMAN  
Attorneys for Plaintiffs

Office and Post Office  
280 North Central Avenue- Suite 40  
Hartsdale, New York 10530  
New York, New York 10013  
(914) 946-3344

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X

BERIAM ORTIZ,

Plaintiff,

COMPLAINT

Index #: 301887/bw7

-against-

DATE FILED

10/16/2007

ERIN KATHLEEN BARLOW, TOYOTA MOTOR  
CREDIT, CORP. and CAROL SHERMAN,

Defendants.

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Plaintiff, by her attorneys, **JAYS. HAUSMAN & ASSOCIATES, P.C.**, complaining of the  
defendants, alleges the following upon information and belief:

**AS AND FOR A FIRST CAUSE OF ACTION**

1. That at all times hereinafter mentioned, the plaintiff resides in the County of Bronx.
2. That this cause of action alleged herein arose in the County of Bronx, State of New York.
3. That this action falls within one or more exemptions set forth in CPLR §1602.
4. That at all times hereinafter mentioned the defendant, ERIN KATHLEEN BARLOW, was a resident of the State of Pennsylvania.
5. That at all times hereinafter mentioned, and upon information and belief, the defendant, ERIN KATHLEEN BARLOW, owned the motor vehicle bearing registration number EVK2109, State of Pennsylvania.

6. That at all times hereinafter mentioned, and upon information and belief, the defendant, ERIN KATHLEEN BARLOW, operated the motor vehicle bearing registration number EVK2109, State of Pennsylvania.

7. That at all times hereinafter mentioned, and upon information and belief, the defendant, ERIN KATHLEEN BARLOW, drove the motor vehicle bearing registration number EVK2109, State of Pennsylvania.

8. That at all times hereinafter mentioned, and upon information and belief, the defendant, ERIN KATHLEEN BARLOW, maintained the motor vehicle bearing registration number EVK2109, State of Pennsylvania.

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9. That at all times hereinafter mentioned, and upon information and belief, the defendant, ERIN KATHLEEN BARLOW, operated, drove, and maintained the motor vehicle bearing registration number EVK2109, State of Pennsylvania, with the knowledge, permission and consent of its owner.

10. That at all times hereinafter mentioned and upon information and belief, the defendant TOYOTA MOTOR CREDIT, CORP. was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.

11. That at all times hereinafter mentioned, and upon information and belief, the defendant TOYOTA MOTOR CREDIT, CORP. was and still is a foreign corporation authorized to do business under and by virtue of the Laws of the State of New York.

12. That at all times hereinafter mentioned, and upon information and belief, the defendant TOYOTA MOTOR CREDIT, CORP. maintained a principal place of business in the State of New

York.

13. That at all times hereinafter mentioned, and upon information and belief, the defendant TOYOTA MOTOR CREDIT, CORP. maintained a principal place of business in the State of Georgia.

14. That at all times hereinafter mentioned, and upon information and belief, the defendant, CAROL SHERMAN, was a resident of the State of Connecticut.

15. That at all times hereinafter mentioned, and upon information and belief, the defendant TOYOTA MOTOR CREDIT, CORP. owned the motor vehicle bearing registration number 407USL, State of Connecticut.

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16. That at all times hereinafter mentioned, and upon information and belief, the defendant TOYOTA MOTOR CREDIT, CORP. by its agents, servants, and/or employees, maintained the motor vehicle bearing registration number 407USL, State of Connecticut.

17. That at all times hereinafter mentioned, and upon information and belief, the defendant, TOYOTA MOTOR CREDIT, CORP. by its agents, servants, and/or employees, operated the motor vehicle bearing registration number 407USL, State of Connecticut.

18. That at all times hereinafter mentioned, and upon information and belief, the defendant, TOYOTA MOTOR CREDIT, CORP. by its agents, servants, and/or employees, drove the motor vehicle bearing registration number 407USL, State of Connecticut.

19. That at all times hereinafter mentioned, and upon information and belief, the defendant, CAROL SHERMAN, owned the motor vehicle bearing registration number 407USL, State of Connecticut.

20. That at all times hereinafter mentioned, and upon information and belief, the defendant, CAROL SHERMAN, operated the motor vehicle bearing registration number 407USL, State of Connecticut.

21. That at all times hereinafter mentioned, and upon information and belief, the defendant, CAROL SHERMAN, drove the motor vehicle bearing registration number 407USL, State of Connecticut.

22. That at all times hereinafter mentioned, and upon information and belief, the defendant, CAROL SHERMAN, maintained the motor vehicle bearing registration number 407USL, State of Connecticut.

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23. That at all times hereinafter mentioned, and upon information and belief, the defendant, CAROL SHERMAN, operated, drove, and maintained the motor vehicle bearing registration number 407USL, State of Connecticut, with the knowledge, permission and consent of its owner.

24. That at all times hereinafter mentioned, the plaintiff, BERIAM ORTIZ, operated a motor vehicle bearing registration number DFX8977, State of New York.

25. That at all times hereinafter mentioned, Bruckner Boulevard at or about its intersection with East Tremont Avenue, County of Bronx, State of New York was and still is a public roadway/highway.

26. That on or about April 20, 2007, plaintiff, BERIAM ORTIZ was operating her vehicle on Bruckner Boulevard at or about its intersection with East Tremont Avenue, County of Bronx, State of New York.

27. That on or about April 20, 2007, defendant, ERIN KATHLEEN BARLOW was operating

her vehicle on Bruckner Boulevard at or about its intersection with East Tremont Avenue, County of Bronx, State of New York.

28. That on or about April 20, 2007, defendant, CAROL SHERMAN, was operating the vehicle owned by defendant, TOYOTA MOTOR CREDIT CORP., on Bruckner Boulevard at or about its intersection with East Tremont Avenue, County of Bronx, State of New York.

29. That on April 20, 2007, the motor vehicle owned and operated by defendant, ERIN KATHLEEN BARLOW, came into violent contact with the motor vehicle operated by plaintiff, BERIAM ORTIZ.

30. That on April 20, 2007, the motor vehicle owned by defendant, TOYOTA MOTOR CREDIT CORP. operated by the defendant, CAROL SHERMAN, came into violent contact with the motor vehicle operated by plaintiff, BERIAM ORTIZ.

31. That the aforesaid collision and injuries resulting therefrom, were due solely and wholly as a result of the careless and negligent manner in which the defendants operated and controlled their motor vehicles without this plaintiff in any way contributing thereto.

32. That by reason of the foregoing and the negligence of the said defendants, this plaintiff sustained serious, severe, and permanent injuries to her head, limbs and body, still suffers and will continue to suffer for some time, great physical and mental pain and serious bodily injury; became sick, sore, lame and disabled and so remained for a considerable length of time.

33. That by reason of the wrongful, negligent and unlawful actions of the defendants, as aforesaid, the plaintiff, BERIAM ORTIZ, sustained serious injuries as defined in the Insurance Law of the State of New York, and has sustained economic loss greater than basic economic loss as

defined in said Insurance Law.

34. That by reason of the foregoing and the negligence of the said defendants, this plaintiff, BERIAM ORTIZ, is informed and verily believes her aforesaid injuries are permanent and she will permanently suffer from the effects of her aforesaid injuries and she will be caused to suffer permanent embarrassment and continuous pain and inconvenience.

35. That by reason of the foregoing, this plaintiff, BERIAM ORTIZ, was compelled and did necessarily require medical aid and attention and did necessarily pay and become liable therefore, for medicines and upon information and belief, the plaintiff, BERIAM ORTIZ, will necessarily incur similar expenses in the future.

36. That by reason of the foregoing, the plaintiff, BERIAM ORTIZ, has been unable to attend to her usual occupation and avocation in the manner required.

37. That by reason of the wrongful, negligent and unlawful actions of the defendants, as aforesaid, the plaintiff, BERIAM ORTIZ, was severely injured, bruised and wounded, suffered, still suffers, and will continue to suffer for some time great physical pain and great bodily injuries and became sick, sore, lame and disabled and so remained for a considerable length of time.

38. That as a result of the defendants' negligence as aforesaid, this plaintiff, BERIAM ORTIZ, has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction in this matter.

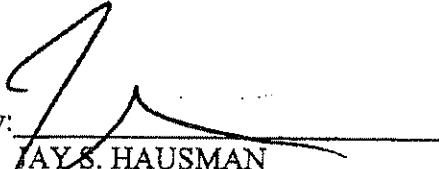
WHEREFORE, plaintiff, BERIAM ORTIZ, demands judgment against the defendants in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction in this matter, on the First Cause of Action; together with the costs and disbursements

of this action.

Dated: Hartsdale, New York  
October 9, 2007

Yours, etc.,

**JAY S. HAUSMAN & ASSOCIATES, P.C.**

By: 

**JAY S. HAUSMAN**

*Attorney for Plaintiff(s)*

280 North Central Ave- Suite 40  
Hartsdale, New York 10530  
(914) 946-3344

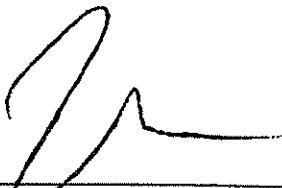
STATE OF NEW YORK, COUNTY OF WESTCHESTER

ss:

I, the undersigned, an attorney admitted to practice in the Courts of New York State, state under penalty of perjury that I am one of the attorneys for the plaintiff(s) in the within action; I have read the foregoing Verified Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters I believe to be true. The reason this verification is made by me and not by my client(s), is that my client(s) are not presently in the County where I maintain my offices. The grounds of my belief as to all matters not states upon my own knowledge are the materials in my file and the investigation conducted by my office.

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Dated: Hartsdale, New York  
October 9, 2007



JAY S. HAUSMAN

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----x Index No.: 301887/07  
BERIAM ORTIZ,

Plaintiff

ANSWER TO COMPLAINT

v.

ERIN KATHLEEN BARLOW, TOYOTA MOTOR  
CREDIT, CORP. AND CAROL SHERMAN,

Defendants

-----x

Defendant, Carol Sherman, by her attorneys, EUSTACE &  
MARQUEZ, answers the Complaint of the Plaintiff by stating  
as follows:

1. Denies, upon information and belief, the allegations  
of paragraphs 16, 17, 18, 30, 31, 32, 33, 34, 35, 36, 37 and 38.

2. Denies having knowledge or information sufficient to  
form a belief as to the truth of the allegations of paragraphs  
1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 24, 26, 27 and 29.

3. Denies having knowledge or information sufficient to  
form a belief as to the truth of the allegations of paragraphs  
3, 15, 19, 22, 25 and 28 and respectfully refers all questions  
of law to this Honorable Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

4. The injuries alleged to have been suffered by the  
Plaintiffs were caused, in whole or part, by the conduct of

Plaintiffs. Plaintiffs' claims therefore are barred or diminished in the proportion that such culpable conduct of Plaintiffs bears to the total culpable conduct causing the damages.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

5. The injuries and damages alleged in the Complaint were caused or contributed to by the culpable conduct including contributory negligence, assumption of the risk and/or product misuse of persons over whom this Defendant had no authority or control.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

6. The Plaintiffs failed to mitigate the damages as alleged in the Complaint by failure to wear or use seatbelts, shoulder harnesses, or other restraints or protective devices, at the time and place of the alleged incident, and any award made to or accepted by the Plaintiffs must be reduced in such proportion to the extent that the injuries complained of were caused, aggravated or contributed to by the Plaintiffs' failure to use such protective devices.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

7. The Plaintiffs are precluded from maintaining this action by Insurance Law Article 51 in that Plaintiffs have

failed to sustain a serious injury or economic loss greater than the basic economic loss as defined by that law.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

8. That recovery, if any, by the Plaintiffs shall be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR 4545(c).

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

9. The injuries and damages alleged in the Complaint of the Plaintiffs were caused or contributed to by Plaintiff's culpable conduct in assuming the risk under the conditions and circumstances existing.

**AS AND FOR A CROSS-CLAIM FOR CONTRIBUTION AGAINST: ERIN KATHLEEN BARLOW**

10. If any plaintiff recovers against this Defendant, then this Defendant will be entitled to an apportionment of responsibility for damages between and amongst the parties of this action and will be entitled to recover from each other party for its proportional share commensurate with any judgment which may be awarded to the plaintiff.

**AS AND FOR A CROSS-CLAIM FOR COMMON LAW INDEMNITY AGAINST: ERIN KATHLEEN BARLOW**

11. If any plaintiff recovers against this Defendant, then this Defendant will be entitled to be indemnified and to recover the full amount of any judgment from the ERIN KATHLEEN BARLOW.

WHEREFORE, this Defendant demands judgment dismissing the Complaint, together with costs and disbursements, and in the event any judgment or settlement is recovered herein against this Defendant, then this Defendant further demands that such judgment be reduced by the amount which is proportionate to the degree of culpability of any plaintiff, and this Defendant further demands judgment against each other party on the respective crossclaims and/or counterclaims.

DATED: November 12, 2007  
White Plains, New York

Yours, etc.,

**EUSTACE & MARQUEZ**  
Attorneys for Defendant  
**CAROL SHERMAN**  
Office and Post Office  
Address  
1311 Mamaroneck Avenue  
3rd Floor  
White Plains, New York 10605  
(914) 989-6050

By:

Edward M. Eustace

To:

Jay S. Hausman & Associates, PC.  
Attorneys for Plaintiff, Beriam Ortiz  
280 North Central Avenue  
Hartsdale, New York 10530

Erin Kathleen Barlow  
83 Maplewood Avenue  
Dallas, Pennsylvania 18612

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----x  
BERIAM ORTIZ,

Plaintiff

Index No.: 301887/07

NOTICE PURSUANT TO  
CPLR 2103

v.

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT,  
CORP. AND CAROL SHERMAN,

Defendants

-----x

PLEASE TAKE NOTICE that Defendant Carol Sherman, by  
her attorneys, EUSTACE & MARQUEZ, hereby serve(s) Notice  
upon you pursuant to Rule 2103 of the Civil Practice Law  
and Rules that it expressly rejects service of papers in  
this matter upon them by electronic means.

PLEASE TAKE FURTHER NOTICE that waiver of the  
foregoing may only be affected by express prior written  
consent to such service by EUSTACE & MARQUEZ and by  
placement thereby of EUSTACE & MARQUEZ electronic  
communication number in the address block of papers filed

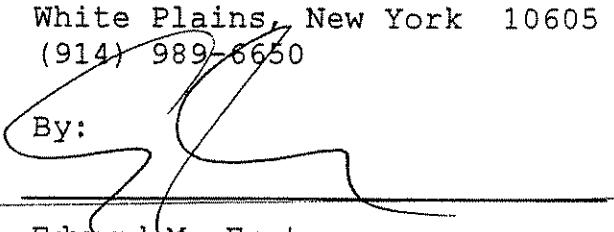
with the Court.

DATED: November 12, 2007  
White Plains, New York

Yours, etc.,

**EUSTACE & MARQUEZ**  
Attorneys for Defendant  
**CAROL SHERMAN**  
Office and Post Office  
Address  
1311 Mamaroneck Avenue  
3rd Floor  
White Plains, New York 10605  
(914) 989-6650

By:

  
Edward M. Eustace

To:

Jay S. Hausman & Associates, PC.  
Attorneys for Plaintiff, Beriam Ortiz  
280 North Central Avenue  
Hartsdale, New York 10530

Erin Kathleen Barlow  
83 Maplewood Avenue  
Dallas, Pennsylvania 18612

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----x Index No.: 301887/07  
BERIAM ORTIZ,

Plaintiff

COMBINED DISCOVERY  
DEMANDS AND NOTICE OF  
DEPOSITION

v.

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT,  
CORP. AND CAROL SHERMAN,

Defendants

-----x

PLEASE TAKE NOTICE, that Defendant Carol Sherman, by her  
attorneys, EUSTACE & MARQUEZ, demands that each adverse party  
afford us the disclosure which this notice and demand specifies:

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**DEPOSITIONS OF ADVERSE PARTIES UPON ORAL EXAMINATION**

A. Each adverse party is to appear for deposition  
upon oral examination pursuant to CPLR 3107:

(1) At this date and time: December 12, 2007 at 10:00  
am

(2) At this place: Eustace & Marquez

1311 Mamaroneck Avenue

3<sup>rd</sup> Floor

White Plains, NY 10605

Pursuant to CPLR 3106(d) we designate the following as  
the identity, description or title of the particular  
officer, director, member, or employee of the adverse party  
specified whose deposition we desire to take: ALL PARTIES

C. Each deposition witness thus examined is to produce at such time and place, pursuant to CPLR 3111, all books, papers, and other things which are relevant to the issues in the action and within that adverse party's possession, custody, or control to be marked as exhibits, and used on the examination.

#### **PARTY STATEMENTS**

Each adverse party is to serve on us, pursuant to CPLR 3101(e) and CPLR 3120, within thirty (30) days from the service of this Demand, a complete and legible copy of any statement made by or taken from any individual party or any officer, agent, or employee of said party.

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#### **INSURANCE POLICIES**

Each adverse party is to serve, pursuant to CPLR 3101(f) and CPLR 3120, within thirty (30) days from the service of this Demand, a complete and legible copy of each primary or excess insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy any such judgment.

#### **ACCIDENT REPORTS**

Each adverse party is to serve, pursuant to CPLR 3101(g) and CPLR 3120, within thirty (30) days from service

of this Demand, a complete and legible copy of every written report of the accident or other event alleged in the complaint prepared in the regular course of that adverse party's business operations or practices.

**PHOTOGRAPHS AND VIDEOTAPES**

Each adverse party is to serve within thirty (30) days from the service of this Demand, complete and legible photographic or videotape reproductions of any and all photographs, motion pictures, maps, drawings, diagrams, measurements, surveys of the scene of the accident or equipment or instrumentality involved in the action or

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photographs of persons or vehicles involved (if applicable) made either before, after or at the time of the events in question, including any photographs or videotapes made of the plaintiff at any time since the incident referred to in the Complaint.

**WITNESSES**

Each adverse party is to serve within thirty (30) days from the service of this Demand, the name and address of each witness to any of the following:

1. The accident, occurrence or any other event set forth in the complaint.

2. Any fact tending to prove actual or constructive notice of any condition which may give rise to the

liability of any person, whether or not a party, for any damages alleged in this action.

3. Any admission, statement, writing or act of our client.

**EXPERT WITNESS MATERIAL**

Each adverse party is to serve, pursuant to CPLR 3101(d)(1), within thirty (30) days from the service of this request, a statement specifying all of the following data as to each person whom that adverse party expects to call as an expert witness at trial:

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- A. The identity of each expert;
- B. The subject matter on which each expert is expected to testify, disclosed in reasonable detail;
- C. The substance of the facts and opinions on which each expert is expected to testify;
- D. The qualifications of each expert; and
- E. A summary of the grounds for each expert's opinion.

**PLEASE TAKE FURTHER NOTICE** that we will object at trial to the offer of any proof of an expert's qualifications which are different from or additional to those which the adverse party calling the expert had disclosed in reference to sub-paragraph D.

**COLLATERAL SOURCE INFORMATION**

Each plaintiff seeking to recover for the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss is to serve, pursuant to CPLR 4545(c), within thirty (30) days from the service of this Demand, a statement of all past and future cost and expense which has been or will, with reasonable certainty, be replaced or indemnified, in whole or in part, from any collateral source such as insurance (except life insurance), social security, workers' compensation, or employee benefit programs. Each such statement is to set forth the name, address, and insurance policy (or other account) number of each collateral source payor; and, separately stated for each payor, a list specifying the date and amount of each payment and the name, address, and social security number or other taxpayer identification number of each payee.

**PRODUCTION OF MEDICAL REPORTS AND AUTHORIZATIONS**

Each plaintiff is to serve upon and deliver to us within thirty (30) days from the service of this Demand:

Medical Reports and Bills: Copies of the medical reports and bills of those health professionals who have previously treated or examined the plaintiff. Those reports shall include a detailed recital of the injuries and

conditions as to which testimony will be offered at the trial, referring to and identifying those diagnostic tests and technicians' reports which will be offered at the trial.

Medical Authorizations: Duly executed and acknowledged written medical authorizations, complying with the Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. §164.508(a), (using attached form) permitting all parties to obtain and make copies of the records and notes including any intake sheets, diagnostic tests, X-Rays, MRI's and cat scan films, of all treating and examining hospitals, physicians and other medical professionals.

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#### **PRODUCTION OF RECORDS AND AUTHORIZATIONS**

Each plaintiff is to serve upon and deliver to us within thirty (30) days from the service of this demand duly executed, fully addressed and acknowledged written authorizations permitting all parties to obtain and make copies of each of the following:

A. All workers' compensation records and reports of hearings pertaining to the incident alleged to have occurred in plaintiff's complaint maintained by the workers' compensation Board and workers' compensation carrier.

B. All records of present and past employment of plaintiff.

C. All records in the no-fault file of any carrier issuing benefits to the plaintiff arising out of the incident alleged to have occurred in the complaint.

D. All records of the Internal Revenue Service filed by the plaintiff for the calendar year prior to the date of the incident alleged in the complaint and for the two subsequent years. Please use IRS form 4506 and attach 2 copies of identification of the plaintiff, with photo and signature as required by the IRS.

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E. All records of schools attended by plaintiff.

F. All records of each collateral source that has provided and/or in the future will be providing any payment or reimbursement for expenses incurred because of this incident.

**NAMES AND ADDRESSES OF ATTORNEYS**

Each adverse party is to serve on us, within thirty (30) days from service of this Demand, the names and addresses of all attorneys having appeared in this action on behalf of any adverse party.

**PLEASE TAKE FURTHER NOTICE THAT THESE ARE CONTINUING DEMANDS**, and that each demand requires that an adverse party who acquires more than thirty (30) days from the

service of this demand any document, information, or thing (including the opinion of any person whom the adverse party expects to call as an expert witness at trial) which is responsive to any of the above demands, is to give us prompt written advice to that effect; and, within thirty (30) days (but no less than sixty (60) days before trial), is to serve all such information on us and allow us to inspect, copy, test, and photograph each such document or thing.

**PLEASE TAKE FURTHER NOTICE** that we will object at trial, and move to preclude as to any adverse party who does not timely identify any witness, serve any report, or produce any document, information, or thing which is responsive to a discovery demand set forth in any of the ensuing paragraphs:

A. From calling any event or notice witness not identified to us or medical expert whose reports have not been served on us;

B. From calling any other expert witness whose identity, qualifications, and expected fact and opinion testimony (together with a summary of the grounds for each such opinion) have not been served on us;

C. From putting in evidence any exhibit not served on us or produced for us to discover, inspect, copy, and

photograph in accordance with any of the ensuing paragraphs; and

D. From offering any other proof not timely disclosed pursuant to a court order in this action.

DATED: November 12, 2007  
White Plains, New York

Yours, etc.,

**EUSTACE & MARQUEZ**  
Attorneys for Defendant  
**CAROL SHERMAN**  
Office and Post Office  
Address  
1311 Mamaroneck Avenue  
3rd Floor  
White Plains, New York 10605  
(914) 989-6650

By:

Edward M. Eustace

To:

Jay S. Hausman & Associates, PC.  
Attorneys for Plaintiff, Beriam Ortiz  
280 North Central Avenue  
Hartsdale, New York 10530

Erin Kathleen Barlow  
83 Maplewood Avenue  
Dallas, Pennsylvania 18612

---

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----x Index No.: 301887/07

BERIAM ORTIZ,

Plaintiff

DEMAND FOR VERIFIED  
BILL OF PARTICULARS

v.

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT,  
CORP. AND CAROL SHERMAN,

Defendants

-----x

**PLEASE TAKE NOTICE**, Defendant, CAROL SHERMAN, by her  
attorneys, Eustace & Marquez, demands pursuant to CPLR  
3041-3044, that each Plaintiff furnish, within thirty (30)  
days of the date of this demand a **Verified** Bill of the  
following particulars:

**A. Liability Issues:**

1. The legal name, address, date of birth and social security number of each plaintiff,
2. The date and approximate time of day of the alleged accident.
3. The location of the alleged accident.
4. (a) A statement of the acts or omissions constituting any negligence or other culpable conduct claimed against this defendant.

(b) If breach of warranty is alleged, state whether said warranty was:

- i. expressed or implied;
- ii. oral or written;
- iii. if written, set forth a copy thereof; and
- iv. if oral, state by whom and to whom the alleged warranty was made, specifying the time, place and persons in sufficient detail to permit identification.

---

5. If actual notice is claimed, a statement of when, by whom and to whom actual notice was given and whether such notice was in writing; also, if such notice was in writing, the statement is to include the name and address of anyone who has any copy of it.

6. If constructive notice is claimed, a statement of how long any allegedly dangerous or defective condition existed before the occurrence and who has first-hand knowledge of any such facts.

7. If any violation is claimed, a citation to each statute, ordinance, regulation, and other federal, state, or local rule which it is claimed that any defendant we represent has violated.

8. If any prior similar occurrence is claimed, a statement of its date, approximate time of day and approximate location.

9. If any subsequent repair or other remedial action is claimed, a statement of its date, approximate time of day, approximate location, who made such repair or took such other action and who has first-hand knowledge of either.

**B. Damage Issues: Personal Injury:**

10. A statement of the injuries claimed to have been sustained by plaintiff as a result of the accident and a description of any injuries claimed to be permanent.

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11. In any action under Ins. Law, §5104(a), for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, in what respect and to what extent any plaintiff has sustained:

- (a) serious injury, as defined by Insurance Law, 5102(b);
- (b) economic loss greater than basic economic loss, as defined by Insurance Law, 5102 (a).

12. If plaintiff was treated at a hospital or hospitals, the name and address of each hospital and the exact dates of admission or treatment at each.

---

13. The name and address of all medical professionals that treated or examined plaintiffs with regard to the injuries claimed, and the exact dates of treatment received from each.

14. If loss of earnings is claimed, the name and address of plaintiff's employer, the nature of plaintiff's employment, and the exact dates that the plaintiff was incapacitated from employment.

15. A statement of the exact dates that each plaintiff was:

- (a) hospitalized;
- (b) confined to bed;
- (c) confined to house;

16. Total amounts each plaintiff claims as special damages for:

- (a) physicians' services;
- (b) medical supplies
- (c) loss of earnings to date, with the name(s) and address(es) of plaintiff's employer(s);
- (d) loss of earnings in the future, stating how the figure was calculated;
- (e) hospital expenses;
- (f) nurses' services;
- (g) any other special damages claimed.

17. If any plaintiff claims loss of services, a statement of all such losses claimed, including the nature and extent of the lost services and all special damages claimed.

18. The name, address and amounts received from each collateral source that has paid or reimbursed plaintiff for any of the expenses incurred as a result of this accident.

DATED: November 12, 2007  
White Plains, New York

Yours, Etc.,  
**EUSTACE & MARQUEZ**  
Attorneys for Defendant  
**CAROL SHERMAN**

---

Office and Post Office  
Address  
1311 Mamaroneck Avenue  
3rd Floor  
White Plains, New York 10605  
(914) 989-6650

By:

---

Edward M. Eustace

To:

Jay S. Hausman & Associates, PC.  
Attorneys for Plaintiff, Beriam Ortiz  
280 North Central Avenue  
Hartsdale, New York 10530

Erin Kathleen Barlow  
83 Maplewood Avenue  
Dallas, Pennsylvania 18612

---

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----x  
BERIAM ORTIZ,

Index No.: 301887/07

Plaintiff

**AFFIDAVIT OF SERVICE**

v.

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT,  
CORP. AND CAROL SHERMAN,

Defendants

-----x  
STATE OF NEW YORK )  
ss.  
COUNTY OF WESTCHESTER )

Janet Salaycik-Formisano, being duly sworn, deposes and  
says:

That I am over the age of eighteen years (18) and not a  
party to this action.

That on November 12, 2007, I served upon:

Jay S. Hausman & Associates, PC.  
Attorneys for Plaintiff, Beriam Ortiz  
280 North Central Avenue  
Hartsdale, New York 10530

Erin Kathleen Barlow  
83 Maplewood Avenue  
Dallas, Pennsylvania 18612

A true copy of the annexed ANSWER TO COMPLAINT, NOTICE  
PURSUANT TO CPLR 2103, DEMAND FOR VERIFIED BILL OF  
PARTICULARS AND VARIOUS DISCOVERY DEMANDS by depositing it  
endorsed in a postpaid properly addressed wrapper, in a  
post office or, official depository under the exclusive  
care and custody of the United States Postal Service within

the State of New York, at the address designated by him or her upon the last paper served by him or her in the action.

DATED: November 12, 2007  
White Plains, New York

Janet Salaycik-Formisano  
Janet Salaycik-Formisano

Sworn and subscribed  
Before me on November 12, 2007

Debra M. Kelly  
Notary Public, State of New York  
No. 01KE0749180  
Qualified in Rockland County  
Commissions Expires 10/10/10

Index No.: 301887/07

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

---

BERIAM ORTIZ,

Plaintiff

against

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT, CORP. AND  
CAROL SHERMAN,

Defendants

---

ANSWER TO COMPLAINT, NOTICE PURSUANT TO CPLR 2103, DEMAND  
FOR VERIFIED BILL OF PARTICULARS AND VARIOUS DISCOVERY  
DEMANDS

---

---

EUSTACE & MARQUEZ  
Attorneys for Defendant  
Carol Sherman  
Office and Post Office Address  
1311 Mamaroneck Avenue  
3rd Floor  
White Plains, New York 10605  
(914) 989-6650



## Exhibit D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BERIAM ORTIZ,

Plaintiff,

-against-

ERIN KATHLEEN BARLOW, TOYOTA  
MOTOR CREDIT, CORP. and CAROL  
SHERMAN,

Defendants.

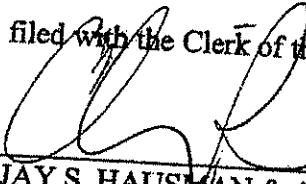
X

**STIPULATION OF DISCONTINUANCE  
AGAINST TOYOTA MOTOR CREDIT  
CORP. ONLY**

Docket No. 07 CV 10365

**MEMO ENDORSED**

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, that the action against the defendant TOYOTA MOTOR CREDIT CORP. ONLY is hereby discontinued, without prejudice and without costs to any party, and that this stipulation may be filed with the Clerk of the Court without further notice.

  
JAY S. HAUSMAN & ASSOCIATES, P.C.  
Attorney for the Plaintiff  
280 North Central Avenue, Suite 40  
Hartsdale, New York 10530  
(914)946-3344

  
LONDON FISCHER, LLP  
Attorneys for Defendant Toyota  
59 Maiden Lane  
New York, New York 10038

By: Hae Jin Shim (HS 3297)

SO ORDERED.



as DJ  
1/3/08

*Anthony D. Perri*  
ANTHONY D. PERRI, ESQ.  
Attorney for Defendant Barlow  
17 State Street, 25<sup>th</sup> Floor  
New York, New York 10004  
File No: 2007-11191/ADP

*John Marquez*  
EUSTACE & MARQUEZ  
Attorney for Defendant Sherman  
1311 Mamaroneck Avenue, 3<sup>rd</sup> Flr  
White Plains, New York 10605  
(914)989-6650

*by J. Marquez (3623)*

SO ORDERED:

U.S.D.J.

## Exhibit E

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

BERIAM ORTIZ,

Plaintiff,

**AFFIDAVIT IN SUPPORT**

-against-

07-CV-10365

ERIN KATHLEEN BARLOW, TOYOTA  
MOTOR CREDIT CORP., and CAROL  
SHERMAN,

Defendants.

-----X

BERIAM ORTIZ, having been duly sworn, deposes and says:

1. I am the plaintiff in the above captioned action.
2. I make this Affidavit in support of the within application for partial summary

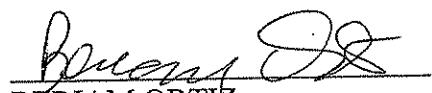
judgment, determining issues of liability in my favor, and against the defendant, ERIN

KATHLEEN BARLOW.

3. On April 20, 2007, at about 5:00 p.m., I was operating a 2003 Volkswagen four door sedan on Bruckner Boulevard at its intersection with East Tremont Avenue, in the Bronx, New York, when I was struck from behind by a red Ford Explorer, which I later discovered was operated by ERIN KATHLEEN BARLOW.

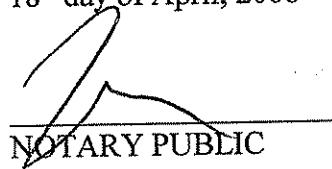
4. At the time of the latter contact, I was traveling in moderate traffic. As a result of being struck in the rear by defendant BARLOW's vehicle, I was pushed forward into a Lexus motor vehicle, which I later learned was operated by the defendant CAROL SHERMAN.

5. After the accident, ERIN KATHLEEN BARLOW approached my vehicle. She apologized for the accident, and admitted that she was reading a map while driving, which caused the contact.



BERIAM ORTIZ

Sworn to before me this  
18<sup>th</sup> day of April, 2008



NOTARY PUBLIC

JAY S. HAUSMAN  
Notary Public, State of New York  
No. 002HA5011781  
Qualified in New York County  
Commission Expires Dec. 10, 2009

## Exhibit F

New York State Department of Motor Vehicles  
POLICE ACCIDENT REPORT (NYC)  
MV-100AH (7/01)

Page 1 of 2 Pages

Preced 045  
Accident No. 1014

Complainant Number

 AMENDED REPORT

Accident Date Month 04 Day 26	Day of Week FRI	Meeting Time 1700	No. of Vehicles 3	No. Injured 0	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/>
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						Accident Reconstructed <input type="checkbox"/>	Yes 156 No <input type="checkbox"/>
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						State of Lic. CT	
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						Address (Include Number & Street) 169 Ocean Dr. W	Apt. No.
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						City or Town Stamford	State CT	Zip Code 06902
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						City or Town Dallas	State PA	Zip Code 18612
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Date of Birth Month 04 Day 03 Year 64	Sex F	Unlicensed <input type="checkbox"/>	No. of Occupants 1	Public Property Damaged <input type="checkbox"/>	Date of Birth Month 03 Day 18 Year 44	Sex F	Unlicensed <input type="checkbox"/>	No. of Occupants 2	Public Property Damaged <input type="checkbox"/>
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Page 2 of 2 Pages

New York State Department of Motor Vehicles

## POLICE ACCIDENT REPORT (NYC)

MF-104AN (7/01)

Precinct 45K

Accident No. 1014

Complaint Number

AMENDED REPORT

Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene	Left Scene	Police Phone No.
Month	Day	Year								OTRS <input checked="" type="checkbox"/> NO
04	20	2007	Friday	1700	8					

VEHICLE 1

VEHICLE 1 - DRIVR	State of Lic.	VEHICLE 2 - DRIVR	State of Lic.
License ID Number	NY	License ID Number	

Driver Name - exactly as printed on license	Driver Name - exactly as printed on license
Address (Include Number & Street)	Address (Include Number & Street)

City or Town	State	Zip Code	City or Town	State	Zip Code
Bronx	NY	10467			

Date of Birth	Sex	Unlicensed	No. of Occupants	Public Property Damaged	Date of Birth	Sex	Unlicensed	No. of Occupants	Public Property Damaged
Month Day Year					Month Day Year				

Name - exactly as printed on registration	Sex	Date of Birth	Sex	Date of Birth
Ortiz, Benjamin Y	F	Month Day Year		Month Day Year

Address (Include Number & Street)	Apartment No.	Released	Address (Include Number & Street)	Apartment No.	Released
323 E Gun Hill Rd	60				

City or Town	State	Zip Code	City or Town	State	Zip Code
Bronx	NY	10467			

Plate Number	State of Reg.	Vehicle Year & Make	Vehicle Type	Ins. Code	Plain Number	State of Reg.	Vehicle Year & Make	Vehicle Type	Ins. Code
0F78977	NY	2005 Honda Accord	4D44	H04					

Ticket/Accident Number(s)	Released	Address (Include Number & Street)	Apartment No.	Released

Violation Sections(s)	Violation Sections(s)

V	Check if involved vehicle is:	Check if involved vehicle is:	Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.
W	<input type="checkbox"/> more than 25 inches wide;	<input type="checkbox"/> more than 55 inches wide;	Accident Diagram
E	<input type="checkbox"/> more than 34 feet long;	<input type="checkbox"/> more than 34 feet long;	Front End
H	<input type="checkbox"/> operated with an overweight permit;	<input type="checkbox"/> operated with an overweight permit;	Left Turn
N	<input type="checkbox"/> operated with an overdimension permit;	<input type="checkbox"/> operated with an overdimension permit;	Right Angle

## VEHICLE 1 DAMAGE CODES

C	Box 1 - Point of Impact	1	2	Check if involved vehicle is:										
L	Box 2 - Most Damage			E	<input type="checkbox"/> more than 25 inches wide;	<input type="checkbox"/> more than 55 inches wide;	H	Enter up to three more Damage Codes	3	4	N		5	<input type="checkbox"/> more than 34 feet long;
E	<input type="checkbox"/> more than 25 inches wide;	<input type="checkbox"/> more than 55 inches wide;												
H	Enter up to three more Damage Codes	3	4	N		5	<input type="checkbox"/> more than 34 feet long;							
N		5	<input type="checkbox"/> more than 34 feet long;											

I	Vehicle By	Turn	Accident Diagram
L	To		Front End
E			Left Turn
H			Right Angle

1	Vehicle By	Turn	Right Turn	Hood On
Vehicle	To		5.	7.
Turned:	To 1825 Livon Ave		Right Turn	Schwerer

Vehicle Damage Coding:	1. 13. SEE DIAGRAM ON RIGHT.	2. 14. UNDERCARRIAGE	17. DEMOLISHED	3. 15. TRAILER	18. NO DAMAGE	4. 16. OVERTURNED	19. OTHER
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4500 COMMUNITY AFFAIRS

PAGE 02

First Name	M.I.	D. Last Name	First	M.I.
D.O.B.		Address		
of Birth Month	Day	Year	Telephone (Area Code)	Date of Birth Month Day Year Telephone (Area Code)
First Name	M.I.	E. Last Name	First	M.I.
D.O.B.		Address		
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First Name	M.I.	Highway Dist. or Scene? <input type="checkbox"/> Yes <input type="checkbox"/> No Name: _____		
D.O.B.		Shield No. _____		
Month	Day	Year	( )	( )

ENTER INSURANCE POLICY NUMBER FROM INSURANCE IDENTIFICATION CARD, EXPIRATION DATE (IN ALL CASES), AND VIN.

Vehicle No. 1 PHS-0149-5290-2-B Vehicle No.2 \_\_\_\_\_  
 Expiration Date 05/04/08 Expiration Date \_\_\_\_\_  
3VWSK69M53M001400 VIN \_\_\_\_\_

INNESS (Attach separate sheet, if necessary)

Address

Phone

## SPECIFY COPY REQUIRED FOR:

Dept. of Motor Vehicles  
(if anyone is killed/injured) Motor Transport Division  
(P.D. vehicle involved) NYC Taxi & Limousine Comm.  
(if a licensed taxi or limousine involved) Other City Agency  
(Specify) \_\_\_\_\_Office of Comptroller  
(if a City vehicle involved) Personnel Safety Unit  
(if a P.D. vehicle involved) Highway Unit \_\_\_\_\_NOTIFICATIONS: (Enter name, address, and relationship of friend or relative notified. If aided person is unidentified, list Missing Person Squad member who is notified. In either case, give date and time of notification.)  
 \_\_\_\_\_

PROPERTY DAMAGED (other than vehicles)

OWNER OF PROPERTY (include city agency, where applicable)

## NYPD VEHICLE IS INVOLVED:

Police Vehicle Operator's First Name	Last Name	Rank	Shield No.	TAX ID No.	Command
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Type of Vehicle	Year	Type of Vehicle	Phone No.	Dept. Vehicle No.	Assigned To What Command
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Equipment In Use At Time of Accident

Siren  Horn  Tunnel Light  4-Way Flasher  High-Level Warning Lights  Traffic Cones  Headlights

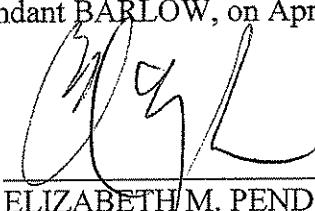
## ACTIONS OF POLICE VEHICLE

Responding to Code Signal \_\_\_\_\_  
 Pursuing Violator  
 Other (Describe) \_\_\_\_\_

Complying with Station House Directive  
 Routine Patrol

CERTIFICATE OF SERVICE

I certify that I mailed a copy of Plaintiff's Notice of Motion, Statement of Uncontested Material Facts and Memorandum of Law by U.S. Mail, to EUSTACE & MARQUEZ, 1311 Mamaroneck Avenue, 3<sup>rd</sup> Floor, White Plains, New York, 10605 , attorney in charge for Defendant SHERMAN and to ANTHONY D. PERRI, ESQ., 17 State Street, 25<sup>th</sup> Floor, New York, New York 10004, attorney in charge for Defendant BARLOW, on April 21, 2008.

  
ELIZABETH M. PENDZICK

Sir: Please take note that the within is a (certified) true copy of a copy entered in the office of the clerk of the within named court on

2007

Dated,

Yours, etc.,

JAY S. HAUSMAN &amp; ASSOCIATES, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address

280 North Central Avenue-Suite 40  
Hartsdale, N.Y. 10530

To

All Counsel

Attorney(s) for

## NOTICE OF SETTLEMENT

Sir: Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at on at at Dated.

2007

M.

Yours, etc.,

JAY S. HAUSMAN &amp; ASSOCIATES, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address  
280 North Central Avenue-Suite 40  
Hartsdale, N.Y. 10530

TO

All Counsel

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BERIAM ORTIZ,

---

Plaintiff(s)

-against-

ERIN KATHLEEN BARLOW, TOYOTA MOTOR  
CREDIT, CORP. and CAROL SHERMAN,

Defendant(s)

## NOTICE OF MOTION

---

JAY S. HAUSMAN & ASSOCIATES, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone  
280 North Central Avenue-Suite 40  
Hartsdale, N.Y. 10530  
(914) 946-3344

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To ALL COUNSEL

Attorney(s)

Service of a copy of the within  
is hereby admitted.

Dated,

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

BERIAM ORTIZ,  
Plaintiff,

-against-

ERIN KATHLEEN BARLOW, TOYOTA  
MOTOR CREDIT CORP., and CAROL  
SHERMAN,

Defendants.

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**STATEMENT OF UNCONTESTED  
MATERIAL FACTS**

07-CV-10365

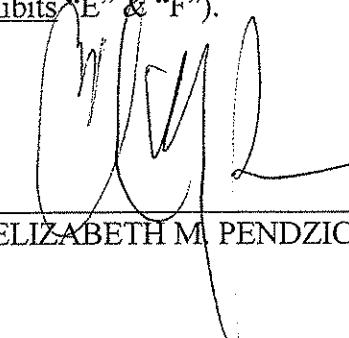
Pursuant to Local Rule 56.1, the plaintiff submits the following statement of uncontested

material facts:

1. The accident occurred on April 20, 2007, on the Bruckner Boulevard, at or near its intersection with East Tremont Avenue, Bronx, New York. (Exhibits "E" & "F").
2. The defendant, Erin Kathleen Barlow, contacted the rear of the plaintiff, Beriam Ortiz's vehicle. (Exhibit "E").
3. After the defendant, Erin Kathleen Barlow, contacted the rear of the plaintiff's vehicle, plaintiff's vehicle was pushed into the vehicle of defendant Carol Sherman. (Exhibit "E").
4. Just prior to the accident, the defendant, Erin Kathleen Barlow, diverted her attention from the roadway, and when her attention was returned thereto, she was unable to avoid contacting the plaintiff, Beriam Ortiz's vehicle. (Exhibits "E" & "F").

Dated: Hartsdale, New York  
April 18, 2008

ELIZABETH M. PENDZICK



Sir:-Please take note that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named court on

2007

**BERIAM ORTIZ,**  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Dated,

Yours, etc.,

**JAY S. HAUSMAN & ASSOCIATES, P.C.***Attorneys for Plaintiff(s)**Office and Post Office Address*280 North Central Avenue-Suite 40  
Hartsdale, N.Y. 10530

To

All Counsel

Attorney(s) for

*Plaintiff(s)*  
-against-  
*Defendant(s)*

**STATEMENT OF UNCONTESTED FACTS**

Sir:-Please take notice that an order

**JAY S. HAUSMAN & ASSOCIATES, P.C.***Attorneys for Plaintiff(s)**Office and Post Office Address, Telephone*280 North Central Avenue-Suite 40  
Hartsdale, N.Y. 10530  
(914) 946-3344

of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at on

2007

at

M.

Dated.

Yours, etc.

**JAY S. HAUSMAN & ASSOCIATES, P.C.***Attorneys for Plaintiff(s)**Office and Post Office Address*280 North Central Avenue-Suite 40  
Hartsdale, N.Y. 10530

Attorney(s) for

Service of a copy of the within  
is hereby admitted.  
Dated, \_\_\_\_\_

TO

All Counsel

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

BERIAM ORTIZ,  
Plaintiff,

-against-

07-CV-10365

ERIN KATHLEEN BARLOW, TOYOTA  
MOTOR CREDIT CORP., and CAROL  
SHERMAN,

Defendants.

-----X

**MEMORANDUM OF LAW**

**PRELIMINARY STATEMENT**

This personal injury action stems from a three vehicle accident that occurred on April 20, 2007, at approximately 5:00 p.m., on Bruckner Boulevard at or near its intersection with East Tremont Avenue, Bronx, New York. This action was commenced in the Supreme Court, Bronx County. (Exhibits "A" & "B"). It was removed to federal court on grounds of complete diversity of citizenship. (Exhibit "C"). The action against Toyota Motor Credit Corporation was discontinued. (Exhibit "D").

On April 11, 2008, a conference was held before the Honorable Denny Chin. At that conference, permission was granted to initiate the within motion practice.

**ISSUE**

Whether the plaintiff, who was traveling straight on Bruckner Boulevard when she was hit in the rear by the vehicle operated by defendant Erin Kathleen Barlow, is entitled to partial summary judgment against defendant Barlow, determining issues of liability in her favor.

It is respectfully submitted that this question should be answered in the affirmative.

**FACTS**

On April 20, 2007, at about 5:00 p.m., the plaintiff was operating a 2003 Volkswagen four door sedan and traveling on Bruckner Boulevard, in the Bronx, New York. (Exhibit "E"). At or near the intersection of Bruckner Boulevard and East Tremont Avenue, the plaintiff was struck from behind by a Ford Explorer, which she later discovered was operated by Erin Kathleen Barlow. (Exhibit "E").

At the time of the latter contact, the plaintiff was traveling in slowing traffic. (Exhibit "E"). As a result of being struck in the rear by defendant Barlow's motor vehicle, the plaintiff

was pushed forward into a Lexus motor vehicle, operated by the defendant Carol Sherman. When the vehicles came to a rest, defendant Barlow approached the plaintiff's vehicle. She apologized for the accident, and admitted that her conduct was its cause. Specifically, Defendant Barlow admitted to the responding police officer, and to the plaintiff, that she looked down at her map, and by the time she looked back at the road, she was unable to avoid hitting the plaintiff's vehicle. (Exhibits "E" & "F").

### ARGUMENT

Summary judgment is appropriate where there are no genuine issues about any material fact and the movant is entitled to judgment as a matter of law. See FRCP 56. Here, the plaintiff was hit in the rear of her motor vehicle, and pushed into the rear of the vehicle in front of her. This factual scenario creates a presumption of negligence on the part of the following vehicle, and absent a non-negligent explanation for the occurrence, the plaintiff is entitled to summary judgment as a matter of law.

Under New York law, when a driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle. *See Power v. Hupert*, 260 A.D.2d 458, 688 N.Y.S.2d 194 (2d Dep't 1999). Vehicle and Traffic Law § 1129(a) requires a driver to maintain a safe distance between vehicles: "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." The failure to do so constitutes negligence as a matter of law in the absence of a non-negligent explanation. *See Lifshits v. Variety Poly Bags*, 278 A.D.2d 372, 717 N.Y.S.2d 630 (2d Dep't 2000); *Hernandez v. Burkitt*, 271 A.D.2d 648, 706 N.Y.S.2d 456 (2d Dep't 2000); *Aromondo v.*

City of New York, 202 A.D.2d 617, 609 N.Y.S.2d 637 (2d Dep't 1994). “[D]rivers have a ‘duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident.’” Johnson v. Phillips, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545 (1<sup>st</sup> Dep't 1999), quoting DeAngelis v. Kirschner, 171 A.D.2d 593, 567 N.Y.S.2d 457 (1<sup>st</sup> Dep't 1991).

Defendant Barlow failed to abide by the foregoing.

Defendant Barlow contacted the vehicle of plaintiff Beriam Ortiz while Ms. Ortiz's vehicle was traveling straight on Bruckner Boulevard. Ms. Barlow took her eyes off of the roadway to read a map, and in doing so, failed to maintain a reasonable distance between her vehicle and that of the plaintiff. She made contact with the plaintiff's vehicle and pushed plaintiff's vehicle into that of defendant Sherman. It is submitted that defendant Barlow does not have a non-negligent explanation for the happening of this accident, and the plaintiff should thus be awarded judgment on liability as a matter of law.

### CONCLUSION

For all the foregoing reasons, the plaintiff's motion should be granted by this Honorable Court.

Respectfully submitted,  
JAY S. HAUSMAN & ASSOCIATES, P.C.

By:

ELIZABETH M. PENDZICK  
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(914)946-3344

NOTICE OF ENTRY

07-CV-10365

Sir:-Please take note that the within is a (certified) true copy of a copy entered in the office of the clerk of the within named court on

2007

Dated,

Yours, etc.,

JAY S. HAUSMAN & ASSOCIATES, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address

280 North Central Avenue-Suite 40  
Hartsdale, N.Y. 10530

To:

All Counsel

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at

on

at M.

Dated,

Yours, etc.

JAY S. HAUSMAN & ASSOCIATES, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address  
280 North Central Avenue-Suite 40  
Hartsdale, N.Y. 10530

TO

All Counsel

Attorney(s) for

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BERIAM ORTIZ,

Plaintiff(s)

-against-

ERIN KATHLEEN BARLOW, TOYOTA MOTOR  
CREDIT, CORP. and CAROL SHERMAN,

Defendant(s)

MEMORANDUM OF LAW

JAY S. HAUSMAN & ASSOCIATES, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone  
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Hartsdale, N.Y. 10530  
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on 2007

To ALL COUNSEL

Attorney(s)

Service of a copy of the within  
is hereby admitted.

Dated,

Attorney(s) for